IP 00-0393-C M/S Beauchamp v. Weidner [5]
Judge Larry J. McKinney Signed on 5/2/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BEAUCHAMP, RICKY W, BEAUCHAMP, BETH E, Plaintiffs, vs. NOBLESVILLE, CITY OF, DUKETTE, CYNTHIA, RUSSELL, DICK *, COOK, JOE, MILLIGAN, CARY, COTTEY, JACK, WEIDENER, KELLY, LEERKAMP, SONIA, Defendants.	)	CAUSE NO. IP00-0393-C-M/S

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RICKY W. BEAUCHAMP	)	
and BETH E. BEAUCHAMP,	)	
Plaintiffs,	)	
	)	
vs.	)	IP 00-393-C-M/S
	)	
CITY OF NOBLESVILLE, INDIANA, *et al*.,	)	
Defendants.	)	

ORDER ON MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Defendants', Marion County Sheriff's Deputy Kelley Weidner ("Weidner") and Marion County Sheriff Jack Cottey ("Cottey"), Motion for Summary Judgment on Plaintiffs', Ricky and Beth Beauchamp, claims under federal and Indiana law. Beauchamp[1] alleges that Weidner and Cottey violated his civil rights under the United States Constitution and his rights under state law when they participated in the investigation and arrest of him on various charges in Hamilton County, Indiana. Although Beauchamp named several defendants in this lawsuit, this particular order addresses only the summary judgment motion of Weidner and Cottey. The Court will now consider Beauchamp's claims.

I. FACTUAL BACKGROUND

In February 1998, Beauchamp operated a small window cleaning business. *Statement of Facts* ¶ 101. He entered into an agreement with the owner of the Blue Hawaiian Tanning Salon ("Blue Hawaiian")

[1] Most of the claims in this matter involve Defendants' alleged treatment of Ricky Beauchamp. Accordingly, the Court's use of the name "Beauchamp" in this opinion will refer to Ricky Beauchamp.

to clean windows in exchange for tanning sessions. *Id*. ¶ 105. Beauchamp met Michelle Klingerman ("Klingerman"), who worked at the Blue Hawaiian. *Id*. ¶ 106.

On March 5, 1998, the Hamilton County Prosecutor's Office ("the Prosecutor's Office") filed a charge of Attempted Residential Entry against Beauchamp. The alleged victim was Michelle Klingerman. *Id*. ¶ 1. These charges were filed after Detective Milligan ("Milligan") of the Hamilton County Sheriff's Department conducted an investigation of Beauchamp. *Id*. ¶ 2. On April 1, 1998, the Prosecutor's Office filed a motion to revoke Beauchamp's bond, on the ground that he had violated a no-contact order regarding Klingerman. *Id*. ¶ 3. The Court found no evidence that Beauchamp had violated the order and denied the motion to revoke bond. *Id*.

Beauchamp began receiving harassing telephone calls at his residence in Marion County. From April 6 to April 16, 1998, he received 19 telephone calls. *Id*. ¶ 4. Beauchamp called 911 regarding these calls, and the Marion County Sheriff's Department ("MCSD") sent deputies to his residence on at least two occasions. *Id*. ¶ 5. Weidner and Detective Cynthia Dukette of the Noblesville Police Department went to Beauchamp's residence on April 22, 1998. *Id*. ¶ 6. The purpose of the trip was to follow up on the harassing telephone calls Beauchamp had been receiving, and to see if he thought they were connected in any way to the offenses he was being accused of in Hamilton County. *Id*. ¶ 7.

Weidner and Dukette arrived at Beauchamp's residence on the morning of April 22, 1998. *Id*. ¶ 8. According to Beauchamp, Weidner introduced himself as "Detective Weidner," and Dukette as

"Detective Matchette," both of the MCSD. *Id*. ¶ 160. "Matchette" is actually Dukette. *Id*. ¶ 161. Beauchamp had no idea that Dukette was the one involved in the investigation against him regarding Klingerman's assault allegations in Hamilton County.[2] *Id*. ¶ 163. Nonetheless, Beauchamp invited them inside and showed them the list of telephone calls, and the name and address of Jeffrey Leverige ("Leverige"), whom Beauchamp believed had made the calls. *Id*. ¶ 10. He also played recordings of the calls for Weidner and Dukette. *Id*. ¶ 166. The caller accused Beauchamp of being a stalker and a rapist. *Id*. ¶ 168. Beauchamp suggested that the harassing calls were related to the allegations against him by Klingerman regarding the attempted residential entry and sexual battery.

Beauchamp then showed Weidner and Dukette documents form his itinerary and work schedule that he thought demonstrated the flaws with Klingerman's story and accusations. *Id*. ¶ 12. Beauchamp had been keeping the itinerary on the advice of his attorney. *Id*. ¶ 13. At some point in the conversation, the discussion turned to the idea of Beauchamp submitting to a polygraph examination. Weidner offered to allow Beauchamp to take the examination in Marion County. *Id*. ¶ 14. Beauchamp was excited about the prospect of taking a polygraph examination to prove his innocence, but indicated that he wanted to talk to his attorney before agreeing to do so. *Id*. ¶¶ 36, 165. Beauchamp's attorney never contacted Weidner to make arrangements for the polygraph. *Id*. ¶ 37.

Beauchamp also accompanied Dukette and Weidner to Kinko's to make a copy of his itinerary

[2] Klingerman had alleged that Beauchamp sexually assaulted and/or raped her on April 15, 1998.

and other materials. *Id*. ¶ 15. After their meeting with Beauchamp, Weidner and Dukette met with Detective Clifford of the Hamilton County Sheriff's Department to discuss their conversation and to report that the identity of the caller harassing Beauchamp was Leverige. *Id*. ¶ 18. Weidner did not keep copies of any material Beauchamp had given them. *Id*. ¶ 19.

Within the next day or two, Weidner followed up with Milligan regarding Leverige. Milligan informed Weidner that he told Leverige that in addition to being prosecuted in Marion County for any more harassing calls, he could also be charged in Hamilton County with obstructing an investigation. *Id*. ¶ 20. After that telephone call to Milligan regarding Leverige, Weidner had no further involvement with any investigation of Beauchamp, and had no further contact with Beauchamp. *Id*. ¶ 21.

On April 24, 1998, the Prosecutor's Office filed additional charges against Beauchamp, including charges for rape, burglary, criminal confinement, and invasion of privacy. The alleged victim was again Klingerman, and the incident that gave rise to these new charges allegedly occurred on April 15, 1998. *Id*. ¶ 22. As a result of these new charges, Beauchamp faced a second bond revocation motion. That motion was granted on May 4, 1998, following a hearing where Beauchamp was represented by counsel and presented evidence. Beauchamp was then incarcerated from May 4, 1998, until July 28, 1998. *Id*. ¶ 23. Weidner prepared no affidavit and contributed no information that was used for the April 24, 1998, arrest of Beauchamp. *Id*. ¶ 24. Weidner was not present at Beauchamp's arrest, and was unaware that he was going to be arrested on April 24, 1998. *Id*. ¶ 25. Weidner did not testify at any of Beauchamp's hearings in Hamilton County on the criminal charges. *Id*. ¶ 26. At his deposition, Beauchamp testified that

he had no evidence of what Weidner actually did after April 22, 1998. *Id*. ¶ 27. In fact, Beauchamp testified as follows:

> Q: . . . what other evidence do you have of what Detective Weidner actually did after April 22nd?
>
> A: I have none. I have none because I haven't had any contact. It is only pure speculation based on conversations that my wife had with him and my private investigator had with him.

Rick Beauchamp Dep. at 126.

Weidner talked to Beth Beauchamp by telephone on April 27 or 18, 1998. She informed Weidner that Beauchamp had been arrested, which was the first Weidner had learned of the arrest. *Id*. ¶¶ 28-29. According to Beth Beauchamp, Weidner told her that when Beauchamp would not take the polygraph examination, "we assumed he was guilty." *Beth Beauchamp Dep*. at 96. Weidner never had any conversations with anyone at the Prosecutor's Office regarding Beauchamp's cases. *Statement of Facts* ¶ 32.

II. STANDARDS

A. SUMMARY JUDGMENT STANDARDS

As stated by the Supreme Court, summary judgment is not a disfavored procedural shortcut, but rather is an integral part of the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *see United Ass'n of Black Landscapers v. City of Milwaukee*, 916 F.2d 1261, 1267-68 (7th Cir. 1990), *cert. denied*, 499 U.S. 923 (1991). Motions for summary judgment are governed by Rule 56(c) of the

Federal Rules of Civil Procedure, which provides in relevant part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Once a party has made a properly-supported motion for summary judgment, the opposing party may not simply rest upon the pleadings but must instead submit evidentiary materials which "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). A genuine issue of material fact exists whenever "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The nonmoving party bears the burden of demonstrating that such a genuine issue of material fact exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992, 997 (7th Cir. 1996), *cert. denied*, 520 U.S. 1116 (1997). It is not the duty of the court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying the evidence upon which he relies. *Bombard v. Fort Wayne Newspapers, Inc.*, 92 F.3d 560, 562 (7th Cir. 1996). When the moving party has met the standard of Rule 56, summary judgment is mandatory. *Celotex*, 477 U.S. at 322-23; *Shields Enters., Inc. v. First Chicago Corp.*, 975 F.2d 1290, 1294 (7th Cir. 1992).

In evaluating a motion for summary judgment, a court should draw all reasonable inferences from undisputed facts in favor of the nonmoving party and should view the disputed evidence in the light most favorable to the nonmoving party. *Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996), *cert.*

denied, 519 U.S. 1109 (1997). The mere existence of a factual dispute, by itself, is not sufficient to bar summary judgment. Only factual disputes that might affect the outcome of the suit in light of the substantive law will preclude summary judgment. *Anderson*, 477 U.S. at 248; *JPM Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270, 273 (7th Cir. 1996). Irrelevant or unnecessary facts do not deter summary judgment, even when in dispute. *Clifton v. Schafer*, 969 F.2d 278, 281 (7th Cir. 1992). "If the nonmoving party fails to establish the existence of an element essential to his case, one on which he would bear the burden of proof at trial, summary judgment must be granted to the moving party." *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996), *cert. denied*, 519 U.S. 1115 (1997).

B. SECTION 1983

Title 42 U.S.C. § 1983 creates a federal cause of action for "the deprivation, under color of [state] law, of a citizen's rights, privileges, or immunities secured by the Constitution and laws of the United States." *Spiegel v. Rabinovitz*, 121 F.3d 251, 254 (7th Cir), *cert. denied*, 522 U.S. 998 (1997). Section 1983 is not itself a font for substantive rights; instead it acts as an instrument for vindicating federal rights conferred elsewhere. *Id*. Liability under § 1983 requires proof of two essential elements: that the conduct complained of (1) was committed by a person acting under color of state law; and (2) deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. *Larsen v. City of Beloit*, 130 F.3d 1278, 1282 (7th Cir. 1997). In this case, Beauchamp claims Weidner and Cottey violated his rights under the Fourth Amendment to the United States Constitution by causing him to be arrested without probable cause. The Fourth Amendment requires that police have probable cause to believe that a person has committed or is committing a crime before making an arrest. *U.S. v. Scheets*,

188 F.3d 829, 836 (7th Cir. 1999), *cert. denied*, 528 U.S. 1096 (2000).

A municipality, such as the MCSD, cannot be held liable under § 1983 on a respondeat superior theory. *Latuszkin v. City of Chicago*, 250 F.3d 502, 504 (7th Cir. 2001). Instead, to establish liability for the MCSD, Beauchamp must prove that: (1) he suffered a deprivation of a federal right; (2) as a result of either an express municipal policy, widespread custom, or deliberate act of a decision-maker with final policy-making authority for the MCSD; which (3) was the proximate cause of his injury. *Ienco v. City of Chicago*, 2002 WL 548891, *3 (7th Cir. April 12, 2002) (citing *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690-91(1978); *Frake v. City of Chicago*, 210 F.3d 779, 781 (7th Cir.2000)).

C. STATE LAW CLAIMS

1. False Arrest

To prevail on a false arrest claim under Indiana law, a plaintiff has the burden of establishing that the officer had no probable cause to arrest him, or that the officer did not act in good faith. *Garrett v. City of Bloomington*, 478 N.E.2d 89, 94 (Ind. Ct. App. 1985). A policeman is not liable for false arrest simply because the innocence of the suspect is later proved. *Id*.

2. False Imprisonment

Beauchamp also alleges a claim for false imprisonment under Indiana law. That particular tort involves an unlawful restraint upon one's freedom of locomotion or the deprivation of liberty of another

without his consent. *Dietz v. Finlay Fine Jewelry Corp.*, 754 N.E.2d 958, 967 (Ind. Ct. App. 2001) (citing *Crase v. Highland Village Value Plus Pharmacy*, 374 N.E.2d 58, 60-61 (Ind. Ct. App. 1978)).

III. DISCUSSION

A. FEDERAL CLAIMS

Beauchamp's § 1983 claim is that Weidner and Cottey somehow caused him to be arrested without probable cause on April 24, 1998, for rape and other charges against him in Hamilton County. While Weidner was involved in the investigation of the harassing telephone calls Beauchamp received in Marion County, he and Cottey deny any involvement whatsoever in the investigation and/or arrest of Beauchamp on the charges filed in Hamilton County. It has been long settled that § 1983 "creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation." *Payne v. Churchich*, 161 F.3d 1030, 1039 (7th Cir. 1998), *cert. denied*, 527 U.S. 1004 (1999) (quoting *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir.1996), *cert. denied*, 520 U.S. 1230 (1997) (quoting *Sheik- Abdi v. McClellan*, 37 F.3d 1240, 1248 (7th Cir.1994), *cert. denied*, 513 U.S. 1128 (1995)). Indeed, Weidner testified that after he followed up with Milligan as part of his investigation of the harassing telephone calls that Beauchamp had received, he had no further involvement with any investigation of Beauchamp's cases in Hamilton County; he had no further contact with Beauchamp; he prepared no affidavit and contributed no information that was used for Beauchamp's arrest warrant on the Hamilton County charges; and he had no knowledge that Beauchamp was going to be arrested on the rape charge on April 24, 1998. *Weidner Aff.* ¶¶ 20-22.

In spite of this undisputed evidence, Beauchamp claims that a jury could reasonably infer that Weidner was indeed involved with and contributed to his investigation and arrest on the Hamilton County charges. In his surreply brief, Beauchamp alleges that when his wife asked Weidner why Beauchamp had been arrested just two days after Weidner offered him a polygraph examination, Weidner allegedly replied, "[w]e thought he was guilty when he did not take the polygraph." *Beauchamp's Surreply Brief* at 2. Because Weidner used the term "we," Beauchamp concludes that an inference is raised that not only was Weidner involved in the rape investigation, but that he supported and encouraged the arrest. *Id*. The Court disagrees, however, that such an inference can be made. Even if Weidner stated that he and someone else thought Beauchamp was guilty of the Hamilton County charges, that certainly does not mean that Weidner was personally involved in the investigation and/or arrest of Beauchamp on those charges.

Beauchamp also points out that Weidner had previously worked with Dukette on the Noblesville Police Department. According to Beauchamp, Weidner's familiarity with Dukette, coupled with the fact that Dukette accompanied him to Beauchamp's home to investigate the harassing telephone calls raises the inference that Weidner was also involved in Dukette's investigation of the Hamilton County charges. Again, the Court disagrees. Weidner testified that Dukette went with him to Beauchamp's house because they were considering whether the harassing calls may have been connected in any way to the charges against him in Hamilton County. That does nothing, however, to show that Weidner was actually participating in the investigation of the Hamilton County charges.

With no evidence of Weidner's participation in the investigation and arrest on April 24, 1998,

Beauchamp's § 1983 claim against him fails as a matter of law. The Court **GRANTS** summary judgment on that claim against Weidner in his individual capacity.

In addition, Beauchamp has produced no evidence that Cottey played any part in the investigation or arrest of Beauchamp on the Hamilton County charges. The doctrine of *respondeat superior* cannot be used to hold a supervisor liable for conduct of a subordinate that violates a plaintiff's constitutional rights. *Chavez v. Illinois State Police*, 251 F.3d 612, 651 (7th Cir. 2001). Supervisory liability will be found, however, if the supervisor, with knowledge of the subordinate's conduct, approves of the conduct and the basis for it. *Id*. That is, "to be liable for the conduct of subordinates, a supervisor must be personally involved in that conduct." *Id*. (citations omitted). "[S]upervisors who are merely negligent in failing to detect and prevent subordinates' misconduct are not liable . . . The supervisors must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see. They must in other words act either knowingly or with deliberate, reckless indifference." *Id*. There is simply no evidence that Cottey had any involvement whatsoever with respect to the charges pending against Beauchamp in Hamilton County. Accordingly, to the extent Beauchamp attempts to assert a claim against Cottey in his individual capacity, the Court **GRANTS** summary judgment in favor of Cottey.

There also is no evidence to support Beauchamp's claim against the MCSD. A municipality, like supervisors, cannot be held liable under § 1983 on a *respondeat superior* theory. *Latuszkin*, 250 F.3d at 504. Instead, to establish liability for the MCSD, Beauchamp must prove that: (1) he suffered a deprivation of a federal right; (2) as a result of either an express municipal policy, widespread custom, or

deliberate act of a decision-maker with final policy-making authority for the MCSD; which (3) was the proximate cause of his injury. *Ienco*, 2002 WL 548891 at *3. There is no evidence that either Weidner or Cottey was involved in the deprivation of Beauchamp's constitutional rights, which is the first element of his claim against the MCSD. Accordingly, the Court **GRANTS** Defendants' Motion for Summary Judgment on the § 1983 claim against the MCSD.[3]

B. STATE CLAIMS

Although Beauchamp alleged several state law theories in his complaint, he concedes that "[t]he existing evidence on Weidner's conduct toward Mr. Beauchamp, and the reasonable inferences therefrom, implicate him only in the false arrest and false imprisonment claim." *Beauchamp's Opposition Brief* a 12. Therefore, the Court will only consider those two particular claims as they apply to Weidner's conduct.

To establish a false arrest claim under Indiana law, Beauchamp must show that Weidner either had no probable cause to arrest him, or that he did not act in good faith. *Garrett*, 478 N.E.2d at 94. Because there is no evidence that Weidner participated in Beauchamp's arrest, this claim fails. Beauchamp's false imprisonment claim also is without merit. A false imprisonment under Indiana law involves an unlawful restraint upon one's freedom of locomotion or the deprivation of liberty of another without his consent. Again, there is no evidence that Weidner was somehow involved in the restraint of Beauchamp, or in the deprivation of his liberty. As a result, Beauchamp cannot establish a false imprisonment claim, either.

[3] This would also encompass any claim against Weidner or Cottey in his official capacity, which is really a claim against the MCSD.

Defendants are thus entitled to summary judgment on both of Beauchamp's claims under Indiana law.

IV. CONCLUSION

Plaintiffs have failed to present sufficient evidence from which the Court could find a genuine issue of material fact on their claims under § 1983 and Indiana law. Accordingly, the Court **GRANTS** Weidner's and Cottey's Motion for Summary Judgment in its entirety.

IT IS SO ORDERED this _____ day of May, 2002.

LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

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